

**REMARKS**

The Office Action dated September 2, 2005 has been carefully reviewed and the foregoing amendments have been made as a consequence thereof.

Claims 1-20 are now pending in this application. Claims 1-20 are rejected. Claims 1, 10, and 19 have been amended. No new matter has been added.

In accordance with 37 C.F.R. 1.136(a), a one-month extension of time is submitted herewith to extend the due date of the response to the Office Action dated September 2, 2005 for the above-identified patent application from December 2, 2005 through and including January 3, 2005. January 2, 2005 is a Federal holiday. In accordance with 37 C.F.R. 1.17(a)(1), authorization to charge a deposit account in the amount of \$120.00 to cover this extension of time request also is submitted herewith.

Applicants respectfully traverse the statement on page 10 of the Office Action. The statement on page 10 states, "In citing Asthana et al....on the Information Disclosure Statement..., the applicant clearly admitted that Asthana et al. is prior art". 37 C.F.R. §1.97(h) states, "The filing of an information disclosure statement shall not be construed to be an admission that the information cited in the statement is, or is considered to be, material to patentability". Moreover, mere listing of a reference in an information disclosure statement is not taken as an admission that the reference is prior art against the claims. *Riverwood Int'l Corp. v. R.A. Jones & Co.*, 324 F.3d 1346, 1354-55, 66 USPQ2d 1331, 1337-38 (Fed Cir. 2003). Accordingly, Applicants respectfully submit that Asthana et al. filed on August 8, 2001, by the Applicants, in an information disclosure statement is not admitted prior art.

The rejection of Claims 1-9 under 35 U.S.C. § 101 as being directed to non-statutory subject matter is respectfully traversed. Claim 1 has been amended. Claims 2-9 depend, directly or indirectly, from independent Claim 1. For the reasons set forth above, Applicants respectfully request that the Section 101 rejection of Claims 1-9 be withdrawn.

The rejection of Claims 1-20 under 35 U.S.C. § 103 (a) as being unpatentable over Webvan (1999), aspects of which are discussed in the following references: Borders et al. (US Patent Publication 2001/0047285) (“Borders”), Murphy, Jean, Webvan: Rewriting The Rules On ‘Last Mile’ Delivery (2000) (“Murphy”), O’Briant, Erin, Webvan Revs Up (2000) (“O’Briant”), in view of Asthana et al. (U.S. Patent No. 5,265,006) is respectfully traversed.

Borders describes a method for scheduling delivery of products via the Internet. The method includes generating a delivery window grid and scheduling the selected window with reference to available resource capacity which is reflective of a plurality of previous commitments (paragraph 7). The method also includes capacity planning (paragraph 45). In the method, a number of totes is estimated and updated at checkout based on a plurality of items in a customer’s cart and information in a catalog about a volume of those items (paragraph 60). This is necessary because in scheduling delivery, the customer is reserving a number of different types of capacity, e.g., van capacity, and service duration (paragraph 60)

Murphy describes a system including a plurality of key supply chain partners including Optum Inc., for warehouse management, and Descartes Systems, for routing and scheduling (page 3). The system further includes Harbinger.net, which is used for communications with suppliers (page 3). The system also includes a plurality of distribution center hubs. From the distribution center hubs, orders are trucked to strategically located transfer stations where they are moved into vans that serve specific neighborhoods (page 4).

O’Briant describes a method for delivering products. In the method, an outside firm measures a weight and dimensions of every product and a computer system automatically calculates a number of totes needed for each order (page 32). An automated queue of totes is lined in a warehouse so that when an order is ready to be packed, a conveyer automatically releases only a number of totes needed to complete that order (page 32).

Asthana et al. describe a load planning method. In the method, for outbound tonnage, an objective is to calculate a capacity (number of vans) needed for a seven-day forecast period (column 13, lines 14-16). If an expected outgoing capacity for an area A over a time horizon H is equal to an expected incoming capacity for A over H, then A is balanced (column 13, lines 35-37)). If A is not balanced, then either the expected incoming capacity is

greater than the expected outgoing capacity (excess) or outbound is greater than inbound (shortage) (column 13, lines 37-41).

Claim 1 recites a method of displaying the capacity utilization of a goods delivery system, the goods delivery system having at least one delivery agent location, address and delivery zone, said method implemented by a computing unit and comprising the steps of “getting delivery agent information of a delivery agent that delivers a plurality of goods; calculating a first delivery capacity for said delivery agent information; calculating, by a computing unit, a portion of the first delivery capacity used for said delivery agent information; calculating usage information for said delivery agent information based on a single day and a delivery zone; displaying a periodic calendar format illustrating said delivery agent information and delivery agent statistics for a respective zone for each day in the respective period; said periodic calendar further adapted to have drill down capability to display additional daily details; determining whether the first delivery capacity of the delivery agent to deliver the goods during a first period is exceeded; determining whether a second delivery capacity of the delivery agent to deliver the goods during a second period is exceeded; and determining to deliver the goods during the second period upon determining that the first delivery capacity is exceeded and the second delivery capacity is not exceeded, wherein the goods are configured to utilize the entire second delivery capacity.”

None of Borders, Murphy, O’Briant, or Asthana et al., considered alone or in combination, describe or suggest a method of displaying the capacity utilization of a goods delivery system as recited in Claim 1. More specifically, none of Borders, Murphy, O’Briant, or Asthana et al., considered alone or in combination, describe or suggest determining to deliver the goods during the second period upon determining that the first delivery capacity is exceeded and the second delivery capacity is not exceeded, where the goods are configured to utilize the entire second delivery capacity. Rather, Borders describes generating a delivery window grid and scheduling the selected window with reference to available resource capacity which is reflective of a plurality of previous commitments. Borders further describes estimating a number of totes, updating the number of totes at checkout based on a plurality of items in a customer's cart and information in a catalog about a volume of those items. Borders also describes reserving a number of different types of capacity, such as, van

capacity and service duration. Murphy describes trucking orders, from a distribution center, to strategically located transfer stations where the orders are moved into vans that serve specific neighborhoods. O'Briant describes measuring weight and dimensions of every product and automatically calculating a number of totes needed for each order. O'Briant further describes lining the number of totes in a warehouse so that when an order is ready to be packed, a conveyer automatically releases only the number of totes needed to complete that order. Asthana et al. describe calculating a capacity, such as a number of vans, needed for a seven-day forecast period. Asthana et al. further describe that an expected outgoing capacity is balanced if the expected outgoing capacity is equal to an expected incoming capacity. If the expected outgoing capacity is not balanced, then either the expected incoming capacity is greater than the expected outgoing capacity or outbound is greater than inbound. Accordingly, none of Borders, Murphy, O'Briant, or Asthana et al., considered alone or in combination, describe or suggest determining to deliver the goods during the second period upon determining that the first delivery capacity is exceeded and the second delivery capacity is not exceeded, where the goods are configured to utilize the entire second delivery capacity. Hence, for at least the reasons set forth above, Claim 1 is submitted to be patentable over Webvan in view of Asthana et al.

Claims 2-9 depend, directly or indirectly, from the independent Claim 1. When the recitations of Claims 2-9 are considered in combination with the recitations of Claim 1, Applicants submit that dependent Claims 2-9 likewise are patentable over Webvan in view of Asthana et al.

Claim 10 recites a computer program embodied on a computer readable medium for executing a computer process for displaying the capacity utilization of a goods delivery system, the goods delivery system having at least one delivery agent location, address and delivery zone, said computer program comprising at least one code segment for employing a method of displaying the capacity utilization comprising the steps of "getting delivery agent information of a delivery agent that delivers a plurality of goods; calculating a first delivery capacity for said delivery agent information; calculating a portion of the first delivery capacity used for said delivery agent information; calculating usage information for said delivery agent information based on a single day and a delivery zone; displaying a periodic

calendar format illustrating said delivery agent information and delivery agent statistics for a respective zone for each day in the respective period, said periodic calendar further adapted to have drill down capability to display additional daily details; determining whether the first delivery capacity of the delivery agent to deliver the goods during a first period is exceeded; determining whether a second delivery capacity of the delivery agent to deliver the goods during a second period is exceeded; and determining to deliver the goods during the second period upon determining that the first delivery capacity is exceeded and the second delivery capacity is not exceeded, wherein the goods are configured to utilize the entire second delivery capacity.”

None of Borders, Murphy, O’Briant, or Asthana et al., considered alone or in combination, describe or suggest a computer process for displaying the capacity utilization of a goods delivery system as recited in Claim 10. Specifically, none of Borders, Murphy, O’Briant, or Asthana et al., considered alone or in combination, describe or suggest determining to deliver the goods during the second period upon determining that the first delivery capacity is exceeded and the second delivery capacity is not exceeded, where the goods are configured to utilize the entire second delivery capacity. Rather, Borders describes generating a delivery window grid and scheduling the selected window with reference to available resource capacity which is reflective of a plurality of previous commitments. Borders further describes estimating a number of totes, updating the number of totes at checkout based on a plurality of items in a customer's cart and information in a catalog about a volume of those items. Borders also describes reserving a number of different types of capacity, such as, van capacity and service duration. Murphy describes trucking orders, from a distribution center, to strategically located transfer stations where the orders are moved into vans that serve specific neighborhoods. O’Briant describes measuring weight and dimensions of every product and automatically calculating a number of totes needed for each order. O’Briant further describes lining the number of totes in a warehouse so that when an order is ready to be packed, a conveyer automatically releases only the number of totes needed to complete that order. Asthana et al. describe calculating a capacity, such as a number of vans, needed for a seven-day forecast period. Asthana et al. further describe that an expected outgoing capacity is balanced if the expected outgoing capacity is equal to an expected incoming capacity. If the expected outgoing capacity is not balanced, then either

the expected incoming capacity is greater than the expected outgoing capacity or outbound is greater than inbound. Accordingly, none of Borders, Murphy, O'Briant, or Asthana et al., considered alone or in combination, describe or suggest determining to deliver the goods during the second period upon determining that the first delivery capacity is exceeded and the second delivery capacity is not exceeded, where the goods are configured to utilize the entire second delivery capacity. Accordingly, for at least the reasons set forth above, Claim 10 is submitted to be patentable over Webvan in view of Asthana et al.

Claims 11-18 depend, directly or indirectly, from the independent Claim 10. When the recitations of Claims 11-18 are considered in combination with the recitations of Claim 10, Applicants submit that dependent Claims 11-18 likewise are patentable over Webvan in view of Asthana et al.

Claim 19 recites an apparatus for displaying the capacity utilization of a goods delivery system, the goods delivery system having at least one delivery agent location, address and delivery zone, said apparatus for displaying the capacity utilization comprising: "means for getting delivery agent information of a delivery agent that delivers a plurality of goods; means for calculating a first delivery capacity for said delivery agent information; means for calculating a portion of the first delivery capacity used for said delivery agent information; means for calculating usage information for said delivery agent information based on a single day and a delivery zone; means for displaying a periodic calendar format illustrating said delivery agent information and delivery agent statistics for a respective zone for each day in the respective period, said periodic calendar further adapted to having means for utilizing drill down capability to display additional daily details; means for determining whether the first delivery capacity of the delivery agent to deliver the goods during a first period is exceeded; means for determining whether a second delivery capacity of the delivery agent to deliver the goods during a second period is exceeded; and means for determining to deliver the goods during the second period upon determining that the first delivery capacity is exceeded and the second delivery capacity is not exceeded, wherein the goods are configured to utilize the entire second delivery capacity."

None of Borders, Murphy, O'Briant, or Asthana et al., considered alone or in combination, describe nor suggest an apparatus for displaying the capacity utilization as

recited in Claim 19. Specifically, none of Borders, Murphy, O'Briant, or Asthana et al., considered alone or in combination, describe or suggest means for determining to deliver the goods during the second period upon determining that the first delivery capacity is exceeded and the second delivery capacity is not exceeded, where the goods are configured to utilize the entire second delivery capacity. Rather, Borders describes generating a delivery window grid and scheduling the selected window with reference to available resource capacity which is reflective of a plurality of previous commitments. Borders further describes estimating a number of totes, updating the number of totes at checkout based on a plurality of items in a customer's cart and information in a catalog about a volume of those items. Borders also describes reserving a number of different types of capacity, such as, van capacity and service duration. Murphy describes trucking orders, from a distribution center, to strategically located transfer stations where the orders are moved into vans that serve specific neighborhoods. O'Briant describes measuring weight and dimensions of every product and automatically calculating a number of totes needed for each order. O'Briant further describes lining the number of totes in a warehouse so that when an order is ready to be packed, a conveyer automatically releases only the number of totes needed to complete that order. Asthana et al. describe calculating a capacity, such as a number of vans, needed for a seven-day forecast period. Asthana et al. further describe that an expected outgoing capacity is balanced if the expected outgoing capacity is equal to an expected incoming capacity. If the expected outgoing capacity is not balanced, then either the expected incoming capacity is greater than the expected outgoing capacity or outbound is greater than inbound. Accordingly, none of Borders, Murphy, O'Briant, or Asthana et al., considered alone or in combination, describe or suggest means for determining to deliver the goods during the second period upon determining that the first delivery capacity is exceeded and the second delivery capacity is not exceeded, where the goods are configured to utilize the entire second delivery capacity. Accordingly, for at least the reasons set forth above, Claim 19 is submitted to be patentable over Webvan in view of Asthana et al.

Claim 20 depends from the independent Claim 19. When the recitations of Claim 19 are considered in combination with the recitations of Claim 19, Applicants submit that dependent Claim 20 likewise is patentable over Webvan in view of Asthana et al.

For at least the reasons set forth above, Applicants respectfully request that the Section 103 rejection of Claims 1-20 be withdrawn.

Moreover, Applicants respectfully submit that the Section 103 rejection of Claims 1-20 is not a proper rejection. As is well established, obviousness cannot be established by combining the teachings of the cited art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination. None of Borders, Murphy, O'Briant, or Asthana et al., considered alone or in combination, describe or suggest the claimed combination. Furthermore, in contrast to the assertion within the Office Action, Applicants respectfully submit that it would not be obvious to one skilled in the art to combine Webvan with Asthana et al. because there is no motivation to combine the references suggested in the cited art itself.

As the Federal Circuit has recognized, obviousness is not established merely by combining references having different individual elements of pending claims. Ex parte Levengood, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). MPEP 2143.01. Rather, there must be some suggestion, outside of Applicants' disclosure, in the prior art to combine such references, and a reasonable expectation of success must be both found in the prior art, and not based on Applicants' disclosure. In re Vaeck, 20 U.S.P.Q.2d 1436 (Fed. Cir. 1991). In the present case, neither a suggestion nor motivation to combine the prior art disclosures, nor any reasonable expectation of success has been shown.

Furthermore, it is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the cited art so that the claimed invention is rendered obvious. Specifically, one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the art to deprecate the claimed invention. Further, it is impermissible to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. The present Section 103 rejection is based on a combination of teachings selected from multiple patents in an attempt to arrive at the claimed invention. Specifically, Borders teaches generating a delivery window grid and scheduling the selected window with reference to available resource capacity which is reflective of a plurality of previous commitments. Borders further teaches estimating a



number of totes, updating the number of totes at checkout based on a plurality of items in a customer's cart and information in a catalog about a volume of those items. Borders also teaches reserving a number of different types of capacity, such as, van capacity and service duration. Murphy teaches trucking orders, from a distribution center, to strategically located transfer stations where the orders are moved into vans that serve specific neighborhoods. O'Briant teaches measuring weight and dimensions of every product and automatically calculating a number of totes needed for each order. O'Briant further teaches lining the number of totes in a warehouse so that when an order is ready to be packed, a conveyer automatically releases only the number of totes needed to complete that order. Asthana et al. teach calculating a capacity, such as a number of vans, needed for a seven-day forecast period. Asthana et al. further teach that an expected outgoing capacity is balanced if the expected outgoing capacity is equal to an expected incoming capacity. If the expected outgoing capacity is not balanced, then either the expected incoming capacity is greater than the expected outgoing capacity or outbound is greater than inbound. Since there is no teaching nor suggestion in the cited art for the combination, the Section 103 rejection appears to be based on a hindsight reconstruction in which isolated disclosures have been picked and chosen in an attempt to deprecate the present invention. Of course, such a combination is impermissible, and for this reason alone, Applicants request that the Section 103 rejection of Claims 1-20 be withdrawn.

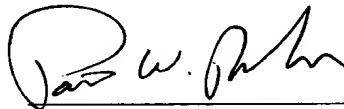
For at least the reasons set forth above, Applicants respectfully request that the rejection of Claims 1-20 under 35 U.S.C. 103(a) be withdrawn.

Express Mail No. EV679277341US

9D-EC-19759  
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In view of the foregoing amendments and remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Patrick W. Rasche", written over a horizontal line.

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